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Respecting Human Dignity

Presentation by

The Government of Saskatchewan

to

The Special Committee
on
Pornography & Prostitution

Regina
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The Honourable Pat Smith, Minister
Responsible for the Status of Women

The Honourable Gordon Dirks, Minister
of Social Services

The Honourable Gary Lane, Minister
of Justice

INTRODUCTION: Our Commitment

The Government of Saskatchewan welcomes this opportunity to discuss the issues of pornography and prostitution. These phenomena are reaching epidemic proportions and we are deeply concerned about the consequences of both upon our society. We present recommendations for strong action and urge this Special Committee to tell the Government of Canada, in an unequivocal manner, that the people of Saskatchewan will not tolerate the exploitation of human life which is inherent in these.

The Government of Saskatchewan is firmly committed to the goals of:

- enhancing the dignity of the individual;
- ensuring equality between the sexes;
- protecting children;
- ensuring the security of the family.

Pornography and prostitution undermine these goals and threaten the basic values of our society. They promote a stereotyped role of men, women and children which is an insult to all who respect the dignity of the person and the value of positive, caring relationships.

The anonymity of the pornography model makes us all the victims of pornography. Role models which portray the brutalization of women, the degradation of men and the victimization of children affect us all, and cannot be condoned.

The laws surrounding pornography and prostitution - regardless of whether children or adults are involved - must strive to control these abuses, and thereby reflect the values of society. That these laws may never be 100% effective should not discourage us from attempting to legislate solutions. The law has not been able to stamp out all drunken driving, vandalism, or shoplifting but we do not condone such acts, or make them legal. We continue to pass laws to control them in an effort to protect society and in order to make clear our values. New laws on pornography and prostitution will serve to confirm society's rejection of all they represent.

We are not advocating the repression of individual freedoms; **we are advocating tough new laws combined with a commitment to enforcing them.**

PORNOGRAPHY

Defining Pornography

We appreciate that different people have different views on what is pornography. We recognize that community standards in Regina may differ from community standards in Toronto. For this reason efforts to define pornography have been characterized by confusion and dissent.

In 1975 the Law Reform Commission of Canada recommended the decriminalization of obscenity offences as they related to non-public display, sale to and consumption by adults.

In 1978 a Parliamentary Committee examined pornography and recommended a drastic attack on it through the Criminal Code.

Since then a series of Bills have been introduced in the House of Commons which attempted to define pornography. But all have died on the Order Paper. Most recently, in January of 1981, the Government of Canada proposed sections on child pornography in its new "sexual assault" Bill. The proposed changes provoked wide-scale protests in the press regarding the legality or illegality of staging classics such as Romeo and Juliet -- Juliet was 14. The child pornography sections were removed before the Bill was passed.

The Government of Saskatchewan believes the time has come to end delays based upon the difficulty of drawing a sufficiently clear line between artistic license and pornography, and between individual freedom and the violent exploitation of members of our society.

Although pornography presents negative images of both sexes, we believe that most pornography is based on the exploitation and degradation of women. With increasing frequency, women are the victims of particularly abusive treatment in pornography which has now come to focus upon violence, coercion, and degradation. It is the proliferation of this pornography which generates the most concern and which poses the greatest threat to the social fabric of our communities and to the safety and dignity of women and children.

The definition of pornography developed by Canadian Debra Lewis provides the basis for our discussion. Lewis defines pornography as material which "depicts, condones and encourages acts of domination, degradation and violence toward women". In using this definition we acknowledge that pornography is not fundamentally about sex; rather it is concerned with violence, cruelty, oppression and degradation.

Definitions of pornography must characterize it as the propagation and reinforcement of a power relationship among the participants. It may involve explicit and degrading sexual relationships. It may involve force,

exploitation and rape. It may involve many things but its underlying purpose is to:

- degrade the category of persons depicted, usually women or children;
- perpetuate the view that the victim is merely an object to be possessed, and controlled, used or abused;
- promote sexism through sexist imagery which models male/female roles respectively as commanding and submissive.

Pornography must be defined and then prohibited. If we do not achieve this, we will be endangering those societal values we all hold dear.

Freedom with Responsibility

"Freedom is the right to be wrong, not the right to do wrong".
- The Hon. John G. Diefenbaker

The idea that freedom of speech is enhanced by materials which openly express contempt and hatred for women is contrary to the principles of a humane and democratic society. Pornography is no more than an abuse of the right to freedom of expression.

In a democratic system, individual freedom must be balanced with individual responsibility. Society has always mantained the right to intervene if the exercise of an individual freedom threatened direct or indirect harm to another person. Our laws on defamation, sedition and non-discrimination all adhere to this principle.

We maintain the issue is not one of individual freedom. Those who devoted so much effort to drafting our new Canadian Charter of Rights and Freedoms certainly had no wish to endanger society by making it victim of the exploitative individual. Surely the fundamental freedoms cited in Section 2 of this Charter do not encompass the issue at hand.

Nor is the issue merely one of artistic license. We cannot permit ourselves to be side-tracked into a debate on the merits of Dostoyevsky's The Possessed in which 12 year old Matroysha is seduced; or about the showing of Romeo and Juliet. These are not our concern. Instead we must focus upon materials such as Where the Young Ones Are, an American sex guide for pedophiliacs listing 378 places in 58 cities where youths may be found. This publication has sold over 70,000 copies.

We believe a distinction can be made between artistic and literary material, and pornography. We note that ACTRA, too, recognizes this distinction, having written that "we cherish freedom from censorship; but we also recognize that

pornography is a form of hate literature, and we will neither tolerate it nor contribute to it".

The Current Situation

At one time we were scandalized by From Here to Eternity in which Burt Lancaster and Deborah Kerr embraced in the surf. Now,

- we have a film, Deep Throat, whose producers exploited and tortured its "star" and yet grossed $50 million for their efforts;

- we have magazines such as Rear Attack, Naked Kids, Fantasy World, Satin Ropes, Family Affair, Dominated and Diapered and Modern Bondage; and

- we have video film catalogues listing "incest", "rape and gang rape", "sadism and masochism" and "bondage" as some of its categories.

Some time ago, the opposition to pornography was effectively defused by labelling people as sexually repressed and close-minded. Feeling powerless and confused, many people chose to ignore the issue. It was, after all, an unpleasant subject and people simply hoped it would go away.

While we looked the other way, however, pornography grew into a multi-million dollar, even billion dollar industry whose presence and influence far outstrips society's willingness to tolerate or condone it. We are now confronted with a situation in which one cannot escape depictions of perversity.

- we have neighbourhood stores displaying magazines such as Hustler with a cover in which a woman is being fed through a meat grinder. There are legs at one end of the grinder and ground meat at the other; and

- we have record stores carrying a Rolling Stones album cover entitled "I'm Black and Blue and I Love It". It depicts a beaten woman who, presumably, loves the abuse.

Common sense tells us that these are not harmless; that these go beyond mere voyeurism; that these are, as the National Film Board called it, "Not a Love Story".

These are common depictions from which neither we nor our children can escape. Furthermore, this phenomenon is not restricted to New York and Los Angeles, or to Montreal and Vancouver. A 1982 survey of retail outlets in Regina found that:

- over 100 stores were carrying so-called "adult magazines";

- in 80 of these stores, the material was less than five feet from the floor and accessible to children.

A follow-up survey in 1984, concentrating on downtown Regina, found that:

- the average number of titles carried had increased from 36 (in 1982) to 42;
- the material was accessible to children in thirteen out of fifteen stores; and
- more than 200 titles were readily available.

Video cassettes, too, are becoming more accessible with the growing popularity of home VCR equipment. Older children or young adults can obtain cassettes which are subsequently shared with younger friends.

Our youth and our value system cannot be sheltered or protected as long as this obscenity is available.

PORNOGRAPHY AND WOMEN

The Problem

It is critical to recognize that the pornography distributed in Canada today bears little resemblance to the Playboy of twenty years ago. At that time, the product was nudity - the hidden cost was depersonalization. It was a substantial cost in terms of the dignity and status of women, but one which society appeared willing to pay.

Today, pornography includes the rape, torture and bondage of women and children for the purpose of arousing and satisfying sexual appetites. The cost is no longer hidden - our common humanity is diminished.

Some early research, such as that presented to the 1970 President's Commission on Pornography in the United States, suggested that pornography was harmless and even served a useful purpose by providing an outlet for sexual fantasy and aggression. More recent research, however, is building a strong case against this premise. No doubt the Committee is familiar with the research done by Neil Malumuth of the University of Manitoba, Ed Donnerstein of the University of Wisconsin and Seymour Feshbach of UCLA. Without going into the details of their studies, attention is drawn to some of their conclusions.

Feshbach and Malumuth write:

> "We are concerned by the possible impact of porn in which sex and violence are fused - as in sado-masochistic encounters. For one of the most troubling results of our research suggests that men who view such materials tend to be more stimulated than others by the idea of rape and less sympathetic to the victims".

Ed Donnerstein of the University of Wisconsin concludes from his research that:

> "It would be expected that films which depict violence against women, even without sexual contact, could act as a stimulus for aggressive acts towards women."

Donnerstein goes further:

> "There is ample evidence...that the observation of violent forms of media can facilitate aggressive responses, yet to assume that the depiction of sexual-aggression could not have a similar effect, particularly against females, would be misleading".

Of equal interest and importance to the relationship between pornography and violence is the anecdotal evidence which exists. We are told that wife batterers are often devotees of pornographic literature. Women in transition houses tell of physical and sexual abuse from husbands who collected

pornography. The literature cites reports from American cities that areas with large numbers of pornographic outlets tend to have disproportionately high rape rates. For years now, law enforcement agencies across the U.S. and Canada have reported that rapists and sex-related murderers are regularly found with pornographic materials in their possession.

Mass murderers David Berkowitz and Charles Manson are two such examples.

Can the sharp increase in rape which has paralleled the proliferation of pornography be explained away as pure coincidence? The Government of Saskatchewan thinks not. As American researcher Robin Morgan maintains, "Pornography is the theory and rape the practice".

American writers, "Eysenck and Nias, in their book Sex, Violence and the Media, say that "pornographic films do constitute clear incitement to maltreat women, downgrade them to a lower status, regard them as mere sex objects, and elevate male machismo to a superior position in the scale of values". The Government of Saskatchewan agrees.

We maintain that the research has already been conducted and that the results are in. Further demands for more evidence is no more than a ploy, a delaying tactic which has gone on long enough. The demand for proof of the link between violence and pornography has only served as a tremendous bonus for the pornography industry and a major impediment to its control. If more research is felt to be needed, let it be on the effects of pornography on women rather than on men. Let us assess the degradation, humiliation, fear or violence women experience, directly or indirectly, as a result of pornography.

A Time For Common Sense

In our view, it is time for the experience of women and for common sense to be accepted as valid. It is time for the debate on pornography to recognize the grim reality which exists in our communities.

Women know that pornogaphy is hate literature aimed at them. Their experiences verify that attitudes and behaviour are affected by the lessons of pornography. They know and they are humiliated, fearful, confused and angry.

Their humiliation is the result of the negative and twisted images of women's nature presented in pornography. Their fear stems from the certainty that people's attitudes and behaviour are affected by pornography.

They are confused by a supposedly just and democratic society which claims to value human life and freedom but does nothing to protect their dignity and their lives from the pornography assault.

Finally, they are angry at the silence which greets their protests and at the callousness of a system which protects an industry thriving on their degradation and exploitation.

Our failure to control these degrading and distorted images of women is a national shame and as offensive to women as are the materials themselves. It is this very failure which helps to create and maintain an environment conducive to violence against women.

PORNOGRAPHY AND CHILDREN

Protecting Children

The Government of Saskatchewan rejects unequivocally all claims that sexual relations between children and adults are anything less than pernicious.

The Government of Saskatchewan affirms that society must protect its children and provide them with a safe, nurturing and positive environment in which to grow.

Although pornography is a concern to all of us as individuals, the Government of Saskatchewan is seldom in a position to deal with it directly as an issue. Instead, it is the human casualties with which we are confronted: children and adults whose lives have either been touched directly by pornographers and pornographic imagery, or who have been victims of the kind of violence and abuse being promoted in this pornography.

Within the social services system there is a particular concern for the impact of pornography on children. Pornography may affect children in three ways:

- they may be exploited as models for the pornography trade;
- they may be abused by adults who are either directly or indirectly reinforced by pornographic materials which appear to legitimize their actions; and
- they may learn behaviour patterns from the pornography to which they are exposed.

Exploitation of children as models is not a common problem in Saskatchewan - but neither is it unknown. Cases of commercial production of child pornography and production for personal use occasionally have come to the attention of the Department of Social Services.

Links with Child Abuse

The link between pornography and incest is well documented. In an address to the Canadian Psychiatric Association in 1982, Dr. Susan Penfold, a psychiatrist who treats incest victims, addressed this issue. She reported that in most cases, the adult "had a wealth of pornographic material in the home".

The Clifford Olson murders are a chilling case in point. Jillian Ridington, a researcher with the National Association of Women and the Law, draws a revealing analogy between the Olson murders and the Tylenol deaths. She writes: "It took only a few deaths for all Tylenol in the U.S. to be pulled from the shelves last winter. The fact that a child murderer Clifford Olson was found with a suitcase full of 'kiddie porn' - including photographs of his

victims - should be enough to require both a serious hazard warning on pornography, or removal from the shelves".

Yet Dr. Densen-Gerber, surveying the pornographic movies available in New York in 1977, found that some films employed children younger than three years of age, that 30% of the films involved children, and that an additional 25% involved incest.

Current literature, contrary to statements made ten years ago, suggests that pornography available from news stands, video cassettes and even television appears to support or condone progressively more violent attitudes.

Research undertaken at the University of Southern California clearly links exposure to violent pornography with increased aggression. Among their findings was statistical evidence that 87% of the molesters of female children and 77% of the molesters of male children studied and modelled their activities on pornography they had seen.

It would be wrong to leave the impression that child abuse, particularly the sexual exploitation of children, occurs simply because pornography is available. Clearly, the problem is much more complex and pornography is just one manifestation. But creating a society based on mutual respect for the individual - whether man, woman or child - can be undertaken on many different levels simultaneously.

Access to Pornography

A further, more general concern about pornography relates to its increasing accessibility to young people.

Researchers have demonstrated that repeated exposure to violence, including explicitly violent pornography, predisposes even normal adults to anti-social attitudes and increased tolerance of violence and abuse. The effect on children is potentially more destructive. Increasingly, children are being exposed to depictions of sex and violence on television. A recent report noted that the current generation of television viewers sees the depiction of 300 times more murders, 500 times more rapes and 600 times more assaults than their parents did a generation ago. A study done in 1983 found that an average of 9.4 violent acts per hour were being shown on American television during prime time.

In all the media, it appears that manufacturers are engaged in a struggle for an increased share of the market. Increasing the amount and changing the character of violence is one of the methods used to increase an organization's market share. We need not remind the Committee of the controversy surrounding the showing of Playboy by First Choice or the recent decision of the CRTC to reduce the restrictions on the films shown by Pay T.V. The Government of

Canada, by this action, is condoning and encouraging this insidious market strategy. The result will be an increasing number of social casualties for whom services will have to be provided - with limited gains made in changing the direction of victims' lives.

CHILD PROSTITUTION

Social Casualities

The increasing number of social casualties in our society will very possibly include a large number of prostitutes for whom abuse as a child appears to be a major factor in shaping an individual's willingness to participate in either child or adult prostitution.

Prostitution most often comes to the attention of provincial authorities through the child protection system. It is just one of many forms of abuse but it occurs with sufficient frequency to be singled out for attention. For many of the sexually active young people who come to the attention of the social services system, prostitution is an intermittent activity which is used in trade for rides, meals or spending money. A smaller proportion uses prostitution as a basic means of survival while trying to hide from family, police or social service officials. It is this latter category who are most likely to be living with or otherwise managed by adults.

It is unnecessary to dwell on the specific circumstances surrounding individual cases; however, one example will serve to describe the kinds of situations encountered. The youth is a boy who was the victim of neglect in the home and had been in and out of foster homes and institutional care several times. At the age of 13, he ran away again and was picked up on the road by an adult who transported him to Vancouver where he was introduced to other adult males who kept and exploited him sexually. The young boy ended up soliciting in Vancouver bars and on the streets before being picked up and transferred back to Saskatchewan by child welfare officials. This case history is not an everyday occurrence, but clearly it indicates the way in which children can be drawn into prostitution. The child could just as easily have been exploited as a model for child pornography.

Research

Will we be able to reconstruct this child's life and positive self image? In Protecting the Child Victim, Vincent de Francis suggests not. His study of more than 250 cases of sexual abuse concluded that 67% were emotionally damaged by the experience and 14% extremely disturbed. Studies by Yvonne M. Toumes, Irving Kaufman, Peck and Taguiri confirm this discouraging diagnosis. The most frequently cited long term effects include bitterness, hostility, distrust, severe conflicts, guilt, shame, depression, and behavioural disorders. Lastly, child abuse of this sort seems to create an attitude in which one becomes much more tolerant of future victimization.

The association of child abuse with prostitution appears to be gaining increased recognition by researchers. In one recent study, detailed life histories were collected on two hundred prostitutes. Former prostitutes working with Delancy Street Foundation, a self-help residential facility known

for its work with prostitutes, criminals and drug addicts conducted this survey. Their results clearly link abuse as juveniles and prostitution as adults. This particular study found that:

- 60% of the prostitutes were 16 or younger; the youngest was a mere child of 10;
- 65% came from families of middle or higher income;
- 60% had been sexually exploited as juveniles; in 63% of the cases, the abuser had been the father or surrogate father;
- only 10% had been abused by strangers;
- in 81% of the cases, some sort of force was used and almost all reported that the sexual abuse caused severe physical harm: cuts, bruises, broken bones, venereal disease;
- 17% ran away from home to avoid the abuse; and
- 2% had attempted to commit suicide.

The authors of this study conclude that "the negative impacts of sexual exploitation were evident in the subjects of the present study even at the time of the interview, which in many cases took place years after the abuse". They further indicate there is an "urgent need to provide services for juvenile victims of sexual exploitation" and that "a critical area for social workers is the treatment of the psychological paralysis which underlies the inability of prostitutes to leave their self-destructive life style".

Conclusions

A recent series of articles on street kids in Saskatoon Star-Phoenix supports these findings. Several of the articles identified prostitution among children as a major concern. Frequently, descriptions of child prostitution also included reference to unstable or abusive home circumstances. One of the articles indicated that adults are sheltering young female runaways in return for sex. One Saskatoon social worker commented that "everything you have in Toronto and New York, you have here. Only in smaller numbers". Another worker stated that "the problem is no different from what it was a decade ago. It's just that Saskatoon is growing and so are the numbers of youngsters."

While child abuse cannot be considered the only factor leading to prostitution it appears to be a major influence in many cases. Prostitutes-whether juvenile or adult - are very much the victims of their life circumstances. It would seem that our best hope for resolving this problem rests with ensuring that measures are taken, as early as possible in a child's life, to prevent abuse and neglect.

PROPOSALS FOR CHANGE: PORNOGRAPHY

The Criminal Law

There is no simple solution to pornography. This is particularly so given that efforts to curb it may be thought to come into conflict with other values which we cherish, such as freedom of speech and expression. **However, we invite the Committee to recognize pornography for what it really is - a threat to freedom, to human dignity and to the basic values which underlie our society.** Existing legislation has been inadequate to combat this threat, and, in our view, a strengthened criminal law is a justifiable response. The criminal law can serve to articulate and bolster the values threatened by pornography, by providing a clear legislative statement of what society is or is not prepared to tolerate. The criminal law can also serve to protect society and the victims of pornography by acting as a deterrent against its spread.

Furthermore it should be recognized that the law can, of itself, be important in shaping attitudes. We therefore offer both criticisms of the current laws and proposals for change.

The current provisions in the Criminal Code relating to obscenity have been largely ineffective in controlling pornography. The pornography available at our corner stores is proof of that ineffectiveness.

The legal interpretation of these provisions has produced bizarre rulings where sex education material is judged obscene because of its explicitness while portrayals of rape, torture and sodomy are not considered obscene because the "sex" is not sufficiently explicit. **The solution to this dilemma lies in re-defining obscenity to shift the focus of the offence from the purely sexual to the violent and the degrading.** It is not sexual morality which requires legislation; it is the portrayal of women and children as acceptable objects of sexual exploitation and violence which requires legal intervention.

Community Standards

The claims by our justice system that the vagueness of current legislation makes it unenforceable are substantiated by the case law in this area. The difficulty begins with trying to define "undue exploitation of sex". The courts have held that the test of "undue exploitation of sex" is to be determined according to contemporary community standards in Canada. This test does not reflect the standards of any particular community of interest or geographic region, but rather those of all segments of the Canadian state.

There are a number of difficulties with this test.

It has proven unworkable to link the definition of obscenity with a factor as amorphous as community standards. No one has ever suggested that the dignity

and status of ethnic and racial groups should be protected by as nebulous a concept as "community standards". Our society, through its laws, has not hesitated to set the standards in these areas. Are women and children deserving of a lesser degree of protection?

We in Saskatchewan are particularly disadvantaged by the use of a community standards test which, in fact, reflects national standards. We know that material which may be tolerated in Vancouver, Montreal or Toronto is completely unacceptable in our communities but we have little legal recourse.

Another, more recently expressed concern about the community standards test is that, as people are exposed to pornography, they become desensitized and no longer are offended by it. This is not pure speculation. The progression from soft core pornography to hard core pornography supports this theory. The very presence of pornography on our news stands or in our movie theatres has been cited in several court cases as evidence of the community's tolerance of it. This circular reasoning leads to a situation where the producers and displayers of pornography are, in effect, allowed to set community standards rather than be governed by them. The Government of Saskatchewan finds this to be intolerable.

We therefore propose that the law be amended to recognize that standards of acceptability for adult materials vary dramatically from one area of the country to another. We would favour a statement in the Criminal Code making it clear that the courts must consider the standards of acceptability on a provincial, rather than national, level.

Redefining Obscenity

It is imperative that those sections of the Criminal Code which are aimed at providing legal sanctions against pornography be re-written so that the public, the police, the prosecutors and the courts know what is being defined as obscene or pornographic. We are convinced that these changes are essential to the success of efforts to stem the tide of pornographic materials which is sweeping our country. We recognize that this may not be an easy task, given the subjective nature of the matter; yet this difficulty should not deter us from attempting to define obscenity in terms of the real harm it causes and to find some basic, objective standards by which material can be measured.

One of the major difficulties in enforcing the present definition of obscenity is the requirement that crime, horror, cruelty or violence be linked with sex in order to be obscene. This concentration on the sexual explicitness of material has meant that materials not predominantly sexual in nature, but tending more towards cruelty and violence, cannot be prosecuted. The amendment to s.159 proposed by the federal Minister of Justice in his recently introduced amendments to the Criminal Code would remove the necessity for one of the listed subjects to be combined with sex.

To the extent that this may make it easier to prosecute depictions of cruelty and violence, we support this amendment to the Criminal Code. However, there are a number of problems with the proposed amendment.

First, it would be necessary for the undue exploitation of sex, violence, crime, horror or cruelty to be "through degrading representations of a male or female person or in any other manner". While this may be significant as a public statement against the degrading nature of pornography, its effect is likely to be to add an extra element to the offence which must be proved by the Crown beyond a reasonable doubt in every case. This would make it more difficult to prosecute obscene materials.

Thus we propose, at the very least, that degradation be included as one of the listed subjects, any one of which can, on its own, amount to obscenity. Degradation should not be considered as an additional element to each offence.

Furthermore, we suggest that it would be possible and desirable to spell out, without detracting from a general obscenity definition, certain kinds of depictions which would amount to obscenity, such as sexual activity involving children, sexual activity between humans and animals, and sado-masochistic or other brutalized forms of sexual activity.

We propose an outright prohibition of such inherently degrading activities without any reference to "undue exploitation" or to the community standards tests.

Regulating Access

A further proposal for change concerns the manner of displaying and selling adult materials. While a stricter definition of obscenity would eliminate some of the more objectionable materials currently available, **we feel it would be desirable to regulate, at the local level, the sale of so-called adult materials that may not necessarily fall within the obscenity definition.** One of the major harms posed by these adult materials is the potential to shape negative and distorted attitudes in children. Many adults also find the prominent display of such materials in public places to be offensive. **Therefore, we believe local governments should be free to regulate the manner in which adult materials are displayed and sold by, for example, restricting the places where adult materials may be sold, limiting the visibility of displays, and restricting the sale of such materials to minors.**

It is arguable that the constitutional authority to legislate on the retailing of adult materials is within provincial competence as a matter of property and civil rights or a matter of a local and private nature. However, recent Supreme Court of Canada decisions on the nature of the federal criminal law power have cast some doubt on the ability of the provinces to legislate in any

area that may already be touched by federal legislation, even where the two do not overlap.

We would therefore suggest an amendment to the Criminal Code to make clear the power of local governments to complement the criminal law by regulating the display and sale of sexually explicit and other adult materials.

We believe that local governments, using their regulatory powers, could play an important role in controlling pornography. While we would favour a recognition of the validity of such regulatory schemes, it must be emphasized that provincial or municipal legislation is not an appropriate vehicle for addressing the moral aspect of pornography. **Consequently, we must look to a strengthened obscenity provision in the Criminal Code to accomplish that.**

Finally, given that a substantial proportion of the pornographic materials available in Canada originates outside the country, **we feel improvements need to be made in controlling the entry of this material into Canada. In this regard, we would urge the federal government to strengthen and enforce provisions of the Customs Act and the Broadcasting Act in order to achieve stricter controls on material flowing into Canada from south of the border.** These are areas in which the provinces clearly have no jurisdiction either through local regulation or law enforcement, and we rely on the federal government to assist us in our efforts to control pornography by getting at the source of many of these materials.

PROSTITUTION

The Problem

While prostitution is often described as the "world's oldest profession", this may be little more than a comment on the vulnerable social and economic position of women throughout history. It may also be indicative of the difficulty of attempting to outlaw the practice of prostitution itself. We believe most Canadians are, like ourselves, morally opposed to prostitution and view prostitutes as victims of a society in which sexual abuse of children is a growing problem and one in which women have yet to achieve true economic equality with men. Indeed, the ideal world would be one in which the social and economic forces that drive persons to a life of prostitution did not exist. It is our hope that we are moving closer to that society.

We believe the majority of citizens view the public manifestations of prostitution as a serious problem today. The Committee has doubtless already heard ample evidence of the problems which street soliciting - and the attendant traffic, noise, displays of indecent acts and harassment to residents - is causing in many Canadian cities. We do not intend to dwell on these problems, other than to say that, in Saskatchewan we too are experiencing the ill-effects of street soliciting. Some of our cities have found it necessary to pass "anti-soliciting" bylaws.

The Options

We begin with the proposition that prostitution is the source of a number of problems with which the law, as it stands, cannot adequately deal. In its discussion paper, your Committee has outlined three ways in which the law could approach prostitution: criminalization, legalization and decriminalization. Let us deal briefly with each of these options.

Some have suggested, as a solution, the "legalization" or controlling of prostitution through some sort of licensing scheme, presumably existing at the local government level. It is said that this option would have the advantages of reducing street soliciting or of confining it to a specific area, of reducing the need for pimps, and of improving health standards. In effect, the prostitute would be treated as a regular "business person" the same as any other. The prostitute would be subject to whatever restrictions on the place and manner of his or her business that the local government saw fit to enact including the obtaining of a business licence.

The Government of Saskatchewan is opposed to any such "legalization". First, it amounts to an "institutionalization" of prostitution by the state - a recognition that it is a legitimate business the same as any other. We believe this would be strenuously opposed by the majority of Canadians. If we start with the proposition that this is a socially undesirable activity, why would the state in effect want to endorse and encourage it? Furthermore, the

experience of other jurisdictions has suggested that confining prostitution to a designated red light district in a city has not had the hoped-for effect of removing it from the public's view and reducing the nuisance and the law enforcement problems. Rather, such experiments have led to new problems, such as the creation of an enclave of lawlessness within a city, to the point where the very people the measure was intended to benefit found it unsafe or undesirable to work there.

Another option offered by your Committee is "decriminalization", or simply removing from the criminal law all those provisions aimed specifically at prostitution, and allowing it to be practised unregulated except to the extent that any of its manifestations amounted to a breach of other, more general provisions of the criminal law. **In our view, decriminalization is not a viable option and would amount to a complete abdication of our responsibility as legislators.** The present state of the problem is such that our laws are inadequate to deal with it, and it would be nothing short of irresponsible to remove the few tools police have available to them to deal with prostitution. If the general criminal law provisions cannot be effectively invoked to curb the street soliciting that currently exists, we fail to see how they could do so once the soliciting provisions were repealed. This option would also be viewed as an endorsement, or at least acceptance, of prostitution by the state, albeit to a lesser extent than the licensing option.

This brings us to the third alternative, which is that of "criminalization". We recognize the difficulties inherent in this option. However, it must also be recognized that prostitution is attended by a number of social evils for which the criminal law is the appropriate and most effective vehicle for redress. **We therefore favour a strengthening of the laws which can combat those evils.**

Proposals for Change

In our view the soliciting law in s.195.1 of the Criminal Code dealt with these problems quite effectively before the Supreme Court of Canada, in the Hutt case, added the requirement that conduct, in order to amount to soliciting, must be "pressing or persistent". At the same time the court placed a restrictive interpretation on the term "public place", in effect making the soliciting law unenforceable. Since that case, some six years ago, it has been evident that the most effective solution would be for Parliament to amend the Criminal Code to overrule the Hutt decision. That this is the only viable alternative was brought home even more clearly when, in the Westendorp case, the Court struck down the Calgary bylaw aimed at curbing street prostitution as an intrusion into the federal Criminal law power. This left no doubt as to the inability of provinces and municipalities to legislate against the "nuisance" aspect of prostitution. In fact the City of Regina was one of a number of Canadian cities which was left with no choice but to repeal its soliciting bylaw as a result of Westendorp.

Indeed, it was the conclusion of the Standing Committee of the House of Commons on Justice and Legal Affairs, in its March 1983 report on street soliciting, that the solution to the problem rests with Parliament. **That committee recommended an expansion of the Criminal Code to include, in addition to the offence of "soliciting", the less severe offence of offering to engage in prostitution in a public place. This is the type of measure favoured by the Government of Saskatchewan.**

One solution apparently favoured by the federal government is to delegate to provinces or municipalities the power to regulate prostitution, either through enactment of appropriate offences or through licensing. This is an area fraught with constitutional problems, given the general inability of Parliament to delegate authority directly to provinces.

It might be possible for the federal government to delegate authority to the provinces by incorporating provincial legislation. However, such provincial legislation would need to have an independent constitutional basis in s.92 of the Constitution Act. After Westendorp, there appears to be no constitutional basis for the provinces to legislate on any aspect of prostitution since the Supreme Court of Canada has declared it to be inherently a matter of criminal law. In our view, this conclusion casts doubts on the validity of any scheme of delegation. Delegation to municipalities may be constitutionally permissible but it would be appropriate only if it were done by way of a licensing scheme. For the reasons outlined above, this option ought to be rejected as a solution.

All of these difficulties point to the urgent need for Parliament to amend the Criminal Law. The federal Minister of Justice recently introduced in the House of Commons, amendments to the soliciting law which would expand the definition of public place and make it clear that clients, as well as prostitutes, can be charged. While we would welcome any clarification that would allow the law to treat clients uniformly across the country, this does not change the law in Saskatchewan. Here the courts have already taken the position that the definition of soliciting includes clients.

Nor does the expanded definition of "public place" to include a motor vehicle deal with the situation where soliciting occurs in a private place open to public view. In any case, these proposed changes do nothing to address the real problem, which is that the definition of soliciting as interpreted by the courts is virtually unenforceable.

In short, the recent federal proposals do little more than increase the range of persons against whom our prosecutions will be unsuccessful.

Children

Reference has already been made to prostitution involving children and the quite separate considerations this problem raises. **In our view the law**

should regard engaging in prostitution with a minor as a form of child abuse and one for which the adult(s) involved should be severely punished. We support the recommendation of the Commons Committee that child prostitution should be of itself an offence. We would support any provision the Criminal Code specifically making it an offence to engage in prostitution with a person under 18. In this case, the harm clearly consists of more than just the public manifestations of soliciting. Such conduct should not be permitted to occur under any circumstances.

CONCLUSION

Throughout this brief we have attempted to outline the threat and harm to our society posed by pornography and prostitution. We have attempted to propose some concrete and workable approaches to attacking the problems. We cannot emphasize too strongly, however, that **now is the time for action** - that there have been enough studies and enough delays.

We have proposed a number of legislative measures to combat pornography and prostitution. At the same time, we urge the Committee to conclude that the primary responsibility for the bringing about these measures rests with the Parliament of Canada. The Province of Saskatchewan intends to do all it can to assist in redressing the problems and the underlying causes of them. However, our efforts will be frustrated if the Government of Canada does not acknowledge that these are problems which require solutions in the criminal law.

It is our sincere hope that this Committee's work will assist in finding some answers, and that it will result in strong recommendations for action being made to the Government of Canada. We hope that our comments have assisted in this process and wish to express our appreciation to the Committee for affording us the opportunity to present our views.

SUMMARY OF RECOMMENDATIONS FOR CHANGE

Pornography

- change the definition of obscenity in the Criminal Code to make it more specific and by spelling out certain kinds of materials that would be deemed obscene; thus taking those kinds of materials outside the scope of the "community standards" test;

- for materials still covered by a general obscenity definition, change the definition to make it clear that a provincial rather than a national "community standards" test is required;

- remove the requirement for "crime, horror, cruelty and violence" to be linked with sex in order to be obscene; if "degradation" is to become part of the definition, it should be included as one of the enumerated subjects rather than an additional element to be proved in each case;

- amend the Criminal Code to clarify the ability of provincial and municipal governments to regulate the sale and display of adult materials;

- strengthen and enforce the relevant provisions of the Customs Act and the Broadcasting Act to prohibit the importation of pornographic and obscene materials.

Prostitution

- reject outright the options of "legalization" or "decriminalization";

- strengthen those sections of the criminal law aimed at the public manifestations of prostitution;

- amend the soliciting provisions of the Criminal Code to overcome the "pressing or persistent" requirement;

- expand the definition of "public place" in the Criminal Code and make it clear that clients can be charged with soliciting;

- make it an offence to engage in prostitution with any person under 18 years of age.